

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

WAYNE RICKY ELSON RUDDER,

Plaintiff,

vs.

ERIC H. HOLDER, Jr.,

Defendant.

NO. CV-10-3095-LRS

ORDER OF DISMISSAL

On October 14, 2010, plaintiff Wayne Ricky Elson Rudder filed, pro se, a Petition for Declaration of Citizenship under 8 U.S.C. § 1503(a).<sup>1</sup> Ct. Rec. 6. On November 18, 2010, the Court reviewed the Petition for legal and factual sufficiency. The Court has determined that the Petition fails to comply with Federal Rule of Civil Procedure 8(a). For instance, the petition states that plaintiff was denied Social Security benefits allegedly because he is not a citizen of the United States. Petitioner, however, never indicates in his Petition what citizenship he is deemed to have, except that it "falls directly under INA 8 USC 1432 (1952)." Ct. Rec. 6, at 2. Petitioner does not allege removal proceedings are at issue.

Fed.R.Civ.P. 8(a) requires a complaint to contain a short and

<sup>1</sup>Petitioner's cover sheet indicates that this case is a civil rights case.

1 plain statement of the grounds upon which the court's jurisdiction  
2 depends, a short and plain statement of the claim showing the pleader  
3 is entitled to relief, and a demand for judgment for the relief the  
4 pleader seeks. Rule 8(e)(1) requires averment of a pleading be  
5 simple, concise and direct. Petitioner names Eric Holder., Jr. in  
6 what appears to be his individual capacity. The Petition does not  
7 state grounds upon which the Court's jurisdiction is based, explain  
8 why Plaintiff is entitled to relief, explain why Defendant is liable  
9 as an individual, make a demand for relief, or explain why it is  
10 signed by an individual named Antolin Andrew Marks rather than  
11 Petitioner Wayne Ricky Elson Rudder. The Petition is not legally  
12 sufficient under the Federal Rules of Civil Procedure.

13 Petitioner has filed other motions<sup>2</sup> which the Court denies for  
14 the reasons that follow. In Petitioner's Motion for Appointment of  
15 Counsel (Ct. Rec. 3) he has an entirely different plaintiff named in  
16 the caption, Antolin Andrew Marks, rather than himself and has crossed  
17 out "Western" District of Washington and replaced it with "Eastern."  
18 Petitioner requests the appointment of counsel pursuant to 28 U.S.C.  
19 §1915(e) and 18 U.S.C. §3006A(2)(B).

20 This court has discretion to designate counsel pursuant to 28  
21 U.S.C. §1915(e)(1) only under exceptional circumstances. *Terrell v.*  
22 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). Determining whether  
23 exceptional circumstances exist requires evaluating "the likelihood of  
24 success on the merits and plaintiff's ability to articulate his claims  
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27 <sup>2</sup>The Court notes Plaintiff has failed to comply with the Local  
Rules for motion practice.

1 pro se in light of the complexity of the legal issues involved." *Id.*  
2 (citation omitted). At this time, the record does not reflect  
3 exceptional circumstances. Additionally, Petitioner does not appear to  
4 be incarcerated, however, his status is not entirely clear. In any  
5 event, the Court denies Petitioner's request for appointed counsel in  
6 this civil case.

7 Finally the Petitioner has filed a "Pro Se motion to obtain ECF  
8 Login and Password," Ct. Rec. 4, which has been brought to the  
9 attention of the Court. The "Petition" filed in this case lists the  
10 "Petitioner" in the caption as "Wayne Ricky Elson Rudder," but is  
11 signed by "Antolin Andrew Marks." In the space above the caption  
12 where an attorney's name and firm is usually recited is a reference to  
13 "Immigration Public Justice Crenshaw Community Service Center." On  
14 the Civil Cover Sheet, Petitioner Rudder identifies his address as 231  
15 Windy Ridge Lane, Moxee. Under these pretenses, the Court denies the  
16 request to obtain an ECF Login and Password.

17 **IT IS HEREBY ORDERED:**

- 18 1. Petitioner's action is **DISMISSED** without prejudice.  
19 2. Petitioner's Motion to Appoint Counsel, **Ct. Rec. 3**, is  
20 **DENIED**.  
21 3. Petitioner's Motion to Obtain ECF Login and Password, **Ct.**  
22 **Rec. 4**, is **DENIED**.

23 **IT IS SO ORDERED.** The District Court Executive is directed to  
24 enter this Order, enter judgment accordingly, provide a copy to

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1 plaintiff, and **CLOSE THIS FILE.**

2 **DATED** this 30th day of November, 2010.

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4 ***s/Lonny R. Suko***

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6 LONNY R. SUKO  
7 CHIEF UNITED STATES DISTRICT JUDGE  
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